REMARKS/ARGUMENTS

Claims 1-25 are pending in the present application. In the December 27, 2005 Non-Final Office Action, the Examiner found the Declaration filed on December 12, 2005 to be ineffective to overcome Levin et al. as the "Declaration does not include a statement showing where the work by the inventor is carried out as required under 37 CFR 1.131" and that "Applicant must give a clear explanation of the exhibits pointing out exactly what the facts are established and relied upon by Applicant". In a telephone conversation with the Examiner on March 20, 2006, the Examiner informed Applicant's attorney that the Examiner was looking for evidence and statements directed to the creation of the process of the invention, not the end product. Moreover, the Examiner indicated that he wanted to have documentary evidence supporting such assertions submitted with the Declaration, if possible.

Submitted herewith is a new Declaration of Applicant Charles Byrne, which Applicant believes overcomes these objections. More particularly, the Declaration not only sets forth the time periods of conceiving the invention, but where these steps occurred and specifically how these steps occurred. From the Declaration, Applicant respectfully asserts that it is abundantly clear that Mr. Byrne conceived of the invention no later than early 2001. Mr. Byrne declares that he discovered that the metal wires and beads from pneumatic tires would have to be removed so as not to injure the pet. Mr. Byrne conceived of replacing the metal wires and beads with synthetic materials, such as nylon

strings. Chinese tire manufacturers indicated that it would not be possible to create the pneumatic tires without the metal wire beads, and that they did not have the technology to implement his suggestions. However, Mr. Byrne collaborated and corresponded with two Chinese tire manufacturers between February and August of 2001. Mr. Bryne attempted to instruct the Chinese manufacturers on how to create the product while in the United States. However, Mr. Bryne found the communication difficult and visited the Xing Ming factory in May of 2001 and provided instructions and prototypes of the synthetic fibers to be used. Later, in August of 2001, Mr. Byrne visited with the Huatian Hand Truck Company, and also provided them instructions and prototypes to use in creating the tire chew toy with nylon in place of metal. The Huatian Hand Truck Company successfully produced this product by creating a small tire with the metal bead replaced with nylon materials per Mr. Bryne's prototypes and instructions. In particular, the metal wire was eliminated, and in its place nylon was embedded between layers of rubber. In the fall and winter of 2001, the Huatian Hand Truck Company and Mr. Byrne collaborated on creating such tire chew toys in smaller diameters, as well as creating other chew toy configurations having nylon mesh material embedded between layers of rubber.

The independent claims (1, 14, and 21) all recite providing first and second layers of rubber material, placing a floss material comprising a mesh fabric of synthetic fibers between the first and second layers of rubber material, and molding these layers into an animal chew toy. From the Declaration of Mr. Byrne, this clearly was reduced to practice no later than the Fall of 2001.

Such reduction to practice predates the January 31, 2002 filing date of the Levin et al. reference. Moreover, it is abundantly clear that Mr. Byrne had conceived of the invention no later than late 2000 or early 2001, and exerted due diligence in reducing the invention to practice, and filing a patent application in April of 2002. Given the foregoing, Applicant respectfully submits that it is abundantly clear that he had conceived and reduced to practice his invention well before the Levin et al. filing date. Thus, this reference should be removed from consideration. With the Levin et al. reference no longer a statutory bar, the rejections of the 35 USC §103(a) rejections of claims 1-25 should be withdrawn.

Respectfully submitted,

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Attachments:
Declaration of Charles A. Byrne